

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

VALERIE W. WAKEFIELD

Plaintiff

v.

**JOY MINING MACHINERY
COMPANY, a division of Harnischfeger
Industries**

Defendants.

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CIVIL DIVISION

Civil Action No. 05 CV 79 - Erie

Honorable Maurice B. Cohill, Jr.

JURY TRIAL DEMANDED

Electronically filed

**MOTION TO STRIKE AFFIDAVITS SUBMITTED BY THE DEFENDANT AFTER THE
CLOSE OF DISCOVERY**

AND NOW, comes the Plaintiff, Valerie W. Wakefield, by and through her attorneys, THE LINDSAY LAW FIRM, P.C. and Alexander H. Lindsay, Jr., Esquire and files the following Motion to Strike Affidavits Submitted by the Defendant After the Close of Discovery and in support thereof avers the following:

1. Fact discovery in the above captioned case was closed on or before November 13, 2006 by Court Order designated "Amended Case Management Order" and filed by the Court on or about October 12, 2006. (*See Amended Case Management Order, Attached as Plaintiff's Exhibit "A"*).
2. Pursuant to the same Court Order, the parties' expert reports were due on December 29, 2006, with expert depositions to be completed by January 29, 2007. (*See Amended Case Management Order, Attached as Plaintiff's Exhibit "A"*).
3. By Court Order dated December 20, 2006, the Court rescheduled the post-

discovery Scheduling Conference from February 8, 2007 to January 23, 2007. (*See Order of Court*, Attached as Plaintiff's Exhibit "B").

4. The post-discovery Scheduling Conference was held on January 23, 2007. On that same date, the Court entered a Final Case Management Order, ordering the parties to file motions for summary judgment on or before March 27, 2007, and setting the case to be called for trial in October, 2007. (*See Final Case Management Order*, attached as Plaintiff's Exhibit "C").

5. The Defendant filed a Motion for Summary Judgment and corresponding Brief in Support of and Concise Statement of Material Facts on or about March 27, 2007.

6. On or about April 19, 2007, the Plaintiff received "Affidavit of Daniel Blauser" from the Defendant. (*See Plaintiff's Exhibit "D"*).

7. On or about April 26, 2007, the Plaintiff filed her Response to Motion for Summary Judgment and supporting documents.

8. On or about May 16, 2007, the Defendant filed with the Court a document titled "Affidavit of Howard J. Horton, Jr." (*See Plaintiff's Exhibit "E"*).

9. The information contained in "Affidavit of Howard J. Horton, Jr." disputes the testimony of one of the Plaintiff's witnesses, Ellie Averill, whose deposition testimony was taken on or about September 21, 2006.

10. Such dispute creates a genuine issue of material fact and would have been pertinent to the Plaintiff's Response to Defendant's Motion for Summary Judgment and corresponding documents.

11. Both the Affidavit of Daniel Blauser and Affidavit of Howard J. Horton, Jr. were

filed by the Defendant after the close of discovery and after the post-discovery Scheduling Conference.

12. "Affidavit of Howard J. Horton, Jr.," was filed by the Defendant after the Defendant had an opportunity to review and analyze the Plaintiff's arguments in opposition to the Defendant's Motion for Summary Judgment.

13. The filings of both affidavits were improper and prejudicial to the Plaintiff as they were filed after the close of discovery and after the Defendant filed its Motion for Summary Judgment, in an attempt to support the Defendant's arguments made in support of its Motion.

14. The filing of "Affidavit of Howard J. Horton, Jr." was particularly prejudicial to the Plaintiff, as the Plaintiff did not have an opportunity to review and address such information in the Plaintiff's Response to Defendant's Motion for Summary Judgment and corresponding documents.

WHEREFORE and based on the foregoing, the Plaintiff respectfully requests this honorable Court to strike the "Affidavit of Daniel Blauser" and "Affidavit of Howard J. Horton, Jr." submitted by the Defendant to the Court after the close of discovery and after the filing of the Defendant's Motion for Summary Judgment.

Respectfully submitted:

THE LINDSAY LAW FIRM, P.C.

s/ Alexander H. Lindsay, Jr.

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